



October 12, 2011

Dr. Gerald Meral, Deputy Secretary  
California Resources Agency  
1416 Ninth Street, 13th Floor  
Sacramento, CA 95814

Dear Jerry,

Thank you for sharing with us the September 21, 2011, memorandum from David Zippin of ICF International to you regarding the relationship of the Effects Analysis (EA) to the Biological Goals and Objectives in the BDCP. This memo was prepared in response to a number of questions the NGOs asked in our August 29 meeting with you and other state and federal officials. These questions were memorialized and articulated at greater length in the September 7, 2011, letter from The Bay Institute to you and David Nawi.

We generally agree with Dr. Zippin's description of the nature and importance of biological goals and objectives in the BDCP process (with one important exception, explained below). While he would also appear to suggest that the projected outcomes of the BDCP described in the EA would be measured against the BDCP biological goals and objectives, the ICF memo is vague on this point.

The memo states that:

“The effects analysis will examine the effects of BDCP actions on the same parameters that are reflected in the biological goals and objectives, including habitat availability, habitat quality, and population dynamics for each covered species. In this sense, the BDCP effects analysis will draw conclusions that are linked to biological goals and objectives.”

The biological objectives are not simply a set of parameters, of course, but the measurable definition of the desired outcome associated with those parameters. Even assuming that the full set of objectives is completed this year, there will need to be a rigorous and scientifically credible determination regarding the extent to which the draft plan can achieve the goals and objectives, and a subsequent opportunity to modify the conservation measures to better achieve those objectives. Given that the EA has been

developed to date absent such objectives, it is almost certain that in some areas the proposed actions will be found to be deficient or highly uncertain in regard to meeting the objectives. The ICF memo does not address this other than stating that “if the biological goals and objectives change significantly from that considered by the effects analysis, how the plan supports the revised goals and objectives may need to be reconsidered.” Actually, the BDCP managers need to anticipate and plan now for the extreme likelihood that significant refinement and further evaluation of conservation measures will need to occur in the context of meeting plan objectives. The commitment to measure the draft plan’s effects against the objectives and iteratively modify the actions until the plan’s objectives are met is critical to the integrity of the process and our continuing support.

This lack of clarity does not seem to apply to the potential for revising the objectives themselves. The ICF memo states:

“While biological goals and objectives help guide the development of the plan’s conservation measures, the conservation measures also help shape the goals and objectives.”

“If at any point in the analytical process there is reason to believe that the biological goals or objectives cannot be met (based on the conclusions of the effects analysis or from other sources), then the goals, objectives, or conservation measures supporting them should be revised.”

We are very concerned about the implication that the means (conservation measures) will shape the ends (objectives) during the course of the analysis, and that failure of the proposed actions to meet the objectives may result in the objectives being changed rather than the actions being modified or supplemented in subsequent analysis. This concern relates not only to the development of the plan itself but to how objectives are treated in the adaptive management of plan implementation.

The objectives and conservation measures are indeed iterative, but not in the way meant here. As we and others have stressed repeatedly, the plan must be designed to achieve S.M.A.R.T. (specific, measurable, *attainable*, relevant, and time-bound objectives). These objectives can and should be refined based on the best available scientific information. Scientifically credible new information indicating that there are no potential suites of management measures that are able to achieve an objective, would provide scientific justification to change the objective because it is not achievable. Information based on the results of an effects analysis confined to evaluating the efficacy of only a single proposed measure or subset of potential measures – or based on the presumed willingness of any party to implement these or other measures – is not sufficient to demonstrate that the objective is unachievable or otherwise should be changed. The BDCP managers and ICF need to be much clearer about the specific type of information that is appropriate for refining the objectives and much more focused on developing an adaptive management program that is designed to modify implementation within the

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plan's parameters to better achieve the objectives rather than one in which objectives are modified if they are not met. Furthermore, the BDCP must be much clearer about the implications of refining the objectives once the plan has been permitted. The original permit terms for a plan that cannot deliver on its original objectives may no longer be justified, and modification of permit terms may be appropriate.

Thank you for the opportunity to comment on the ICF memo. We look forward to working with you to create a scientifically defensible and effective BDCP.

Sincerely,



Gary Bobker  
The Bay Institute



John Cain  
American Rivers

Cc: David Nawi, U.S. Department of the Interior